

Exhibit A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND PLUMBING, INC, a Case No: 3:19-cv-05711
California corporation, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

TOTAL MERCHANT SERVICES, LLC., a
Delaware limited liability company,

Defendant.

**DEFENDANT'S SUPPLEMENTAL
RESPONSES AND OBJECTIONS TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

Date Action Filed: September 11, 2019

Defendant, TOTAL MERCHANT SERVICES, LLC ("Defendant" or "TMS"), by and
through undersigned counsel, hereby serves its supplemental responses and objections to the First
Set of Interrogatories dated December 23, 2019, and served by Plaintiff, ABANTE ROOTER
AND PLUMBING, INC. ("Plaintiff"), and states as follows:

PRELIMINARY STATEMENT

The following supplemental responses and objections to the Interrogatories (the
"Responses") are made solely for the purpose of this action. TMS has not completed its

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speculation. TMS further objects to the respective definitions of the terms “Describe” and “You” as set forth more fully in General Objections B & D *supra*.

INTERROGATORY NO. 3: Identify and Describe the Dialing Equipment You (or any Person acting on Your behalf or for Your benefit) used to place the calls at issue in the Complaint.

SUPPLEMENTAL ANSWER: Subject to and without waiving the following objections, TMS did not place the alleged telephone calls to Plaintiff at issue in the Complaint. Plaintiff does not allege but merely advises TMS of Plaintiff’s belief that a non-party named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and documentation surrounding such alleged telephone calls. Triumph has not responded to TMS. Accordingly, because TMS did not place the alleged calls at issue in the Complaint and because the unalleged but supposed calling party, Triumph, has not responded to TMS, TMS not only lacks information to believe Plaintiff was contacted on behalf of TMS as alleged in the Complaint, but also disputes the assumptions and contentions set forth in this Interrogatory. TMS is unaware of the “dialing equipment” purportedly used by Triumph to contact Plaintiff.

The objections that apply to this Interrogatory continue as follows:

TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this Interrogatory to the extent it calls for a legal conclusion and speculation. TMS further objects to the respective definitions of the terms “Describe,” “Dialing Equipment,” and “You” as set forth in General Objections B, C & D, *supra*.

Interrogatory to the extent it seeks to intrude upon the attorney-client communications privilege and the attorney work-product doctrine.

INTERROGATORY NO. 7: Identify each and every cellphone numbers to which You placed a call (or to which a telemarketing call was placed on Your behalf of for Your benefit) using the same Dialing Equipment that was used to call Plaintiff, for the same purpose Plaintiff was called, where You obtained the phone number called and consent to call in the same manner as You obtained Plaintiff's phone number and consent to call the Plaintiff.

SUPPLEMENTAL ANSWER: Subject to and without waiving the following objections, TMS did not place the alleged telephone calls to Plaintiff at issue in the Complaint. Accordingly, there are no cellphone numbers to identify as requested by this Interrogatory. Notwithstanding the foregoing, Plaintiff does not allege but merely advises TMS of Plaintiff's belief that a non-party named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and documentation surrounding such alleged telephone calls, including the "dialing equipment" associated with such alleged telephone calls. Triumph has not responded to TMS.

The objections that apply to this Interrogatory continue as follows:

TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this Interrogatory and its inclusion of "each and every" as overly broad and unduly burdensome on its face. TMS further objects to this Interrogatory to the extent it calls for a legal conclusion and speculation. TMS further objects to the respective definitions of the terms "Dialing Equipment" and "You" as set forth more fully in General Objections C & D, *supra*.

INTERROGATORY NO. 8: For each phone number identified in response to Interrogatory No. 7, Identify the total number of instances each number was called by You (or by a third-party on Your behalf or for Your benefit) during the relevant time period and the date and times of each such call.

SUPPLEMENTAL ANSWER: Subject to and without waiving the following objections, TMS did not identify any phone number in response to Interrogatory No. 7. Accordingly, TMS is not in possession of responsive information sought by this Interrogatory at this time.

The objections that apply to this Interrogatory continue as follows:

TMS objects to the definition of the term “You” as set forth more fully in General Objection C, *supra*. TMS further objects to this Interrogatory to the extent it calls for a legal conclusion and speculation. TMS further objects to the term “relevant time period” as set forth more fully in General Objection F, *supra*.

INTERROGATORY NO. 9: Identify and Describe Your complete business relationship with Triumph Merchant Solutions, including all contracts and communications regarding the performance of such contracts.

SUPPLEMENTAL ANSWER: Subject to and without waiving the following objections, TMS and Triumph entered into a non-exclusive relationship whereby Triumph sought to submit applications on behalf of certain merchants to TMS for inclusion into card processing services and programs offered by TMS. Pursuant to Fed. R. Civ. P. 33(d), TMS will produce copies of any contract between TMS and Triumph that TMS possesses.

The objections that apply to this Interrogatory continue as follows:

TMS further objects to this Interrogatory and its inclusion of “complete” and “all” as overly broad and unduly burdensome on its face. TMS further objects to the definition of the term “Describe” as set forth more fully in General Objections B, *supra*.

INTERROGATORY NO. 10: Identify all third-parties who have placed telemarketing calls to Plaintiff on Your behalf or for Your benefit during the relevant time period.

SUPPLEMENTAL ANSWER: Subject to and without waiving the following objections, and based on the allegations contained in the Complaint, the respective Rule 26(a)(1) Initial Disclosures served in this action, as well as communications and information shared between counsel for Plaintiff and counsel for TMS, TMS identifies Quality Merchant Services, Inc. and Triumph as third-parties who may have placed telemarketing calls to Plaintiff. Any calls that may have been placed by Quality Merchant Services, Inc. are, by the express allegations set forth in the Complaint, not relevant to this action.

The objections that apply to this Interrogatory continue as follows:

TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this Interrogatory to the extent it calls for a legal conclusion and speculation. TMS further objects to the term “relevant time period” as set forth more fully in General Objection F, *supra*.

INTERROGATORY NO. 11: Identify all third-parties who, on Your behalf or for your benefit during the relevant time period, obtained consent from Plaintiff to place autodialed or pre-recorded calls.

SUPPLEMENTAL ANSWER: Subject to and without waiving the following objections, Plaintiff does not allege but merely advises TMS of Plaintiff’s belief that a non-party named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and documentation surrounding such alleged telephone calls, including the issue of “consent,” if applicable. Triumph has not responded to TMS. Notwithstanding the foregoing, to the extent Plaintiff can show Triumph actually contacted Plaintiff on behalf of TMS using an

1 automatic telephone dialing system or an artificial or prerecorded voice, such contact would have
 2 been pursuant to Plaintiff's consent as required by the agreement between TMS and Triumph.

3 The objections that apply to this Interrogatory continue as follows:

4 TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports
 5 to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this
 6 Interrogatory to the extent it calls for a legal conclusion and speculation.

7
 8 **INTERROGATORY NO. 12:** For each third-party or parties Identified in response to
 9 Interrogatory Nos. 10 and 11, Identify and describe Your complete business relationship with each
 10 third-party, including all contracts and communications regarding the performance of such
 11 contracts.

12 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
 13 directs Plaintiff to Supplemental Answer No. 9.

14 The objections that apply to this Interrogatory continue as follows:

15 TMS objects to this Interrogatory as irrelevant and overly broad in that it is not limited in
 16 scope, particularly, where, as here, TMS's relationship with QMS is, by the express allegations set
 17 forth in the Complaint, not relevant to this action. TMS further objects to this Interrogatory and
 18 its inclusion of "complete" as overly broad and unduly burdensome on its face. TMS further
 19 objects to this Interrogatory to the extent it calls for a legal conclusion and speculation.

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 21 **INTERROGATORY NO. 13:** Identify and Describe any and all steps You (or someone acting
 22 on Your behalf, for Your benefit, in accordance with any contract or other arrangement with You,
 23 or with Your knowledge and prior or subsequent approval) have caused to subscribe to the National
 24 DNC List, to scrub any call list against the National DNC List, or to take any other action to
 25 incorporate the national DNC list into Your call procedures.

26 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
 27 does not place telemarketing calls or telephone solicitations as assumed by this Interrogatory.

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SUPPLEMENTAL ANSWER: Subject to and without waiving the following objections, TMS does not place telemarketing calls as assumed by this Interrogatory. Notwithstanding the foregoing, Plaintiff does not allege but merely advises TMS of Plaintiff's belief that a non-party named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and documentation surrounding such alleged telephone calls, including its use of "Internal Do Not Call Lists." Triumph has not responded to TMS.

The objections that apply to this Interrogatory continue as follows:

TMS objects to this Interrogatory as argumentative to the extent the Interrogatory purports to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this Interrogatory as irrelevant and overbroad in that it is not limited in scope. Specifically, Plaintiff contends a non-party named Triumph, and not TMS, placed the telephone calls to Plaintiff at issue in the Complaint. Thus, the policies of TMS as it relates to "Internal Do Not Call Lists" are not relevant for purposes of this action. To the extent TMS responds to this Interrogatory, TMS will only provide information concerning the purported, but unalleged, activity of Triumph. TMS further objects to this Interrogatory and its inclusion of "any and all" as overly broad and unduly burdensome on its face. TMS further objects to the respective definitions of the terms "Describe" and "You" as set forth more fully in General Objections B & C, *supra*. TMS further objects to this Interrogatory to the extent it seeks to intrude upon the attorney-client communications privilege and the attorney work-product doctrine.

INTERROGATORY NO. 15: Identify all persons who You (or who were called by a third-party on Your behalf or for Your benefit) caused to be called at least twice during any 12-month period where the person's phone number had been on the National DNC List for at least thirty (30) days including the dates and times, and total number, of all such calls.

1 **SUPPLEMENTAL ANSWER:** Subject to and without waiving the following objections, TMS
 2 does not place telemarketing calls as assumed by this Interrogatory. Notwithstanding the
 3 foregoing, Plaintiff does not allege but merely advises TMS of Plaintiff's belief that a non-party
 4 named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly
 5 on behalf of TMS. As such, TMS contacted Triumph in an attempt to ascertain whether Triumph
 6 placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts and
 7 circumstances surrounding such alleged telephone calls, including Triumph's calling records.
 8 Triumph has not responded to TMS.

9 The objections that apply to this Interrogatory continue as follows:

10 TMS objects to the misstatement of the law contained in this Interrogatory concerning the
 11 time period in which a telephone number must receive two calls in relation to the placement of
 12 such telephone number on any national do not call database. For this same reason, TMS further
 13 objects to this Interrogatory as irrelevant and not proportional to the needs of the case. TMS further
 14 objects to this Interrogatory as irrelevant, not proportional to the needs of the case, overbroad, and
 15 unduly burdensome in that it is not limited in scope. To the extent TMS responds to this
 16 Interrogatory, TMS will only provide information concerning the purported, but unalleged, activity
 17 of Triumph. TMS further objects to this Interrogatory to the extent it seeks to compel TMS to
 18 conduct an analysis of the calling activity of Triumph necessary for Plaintiff to establish its claims.
 19 Indeed, Plaintiff carries the burden to conduct such an analysis, through expert testimony or
 20 otherwise, sought by this Interrogatory and, as such, TMS will not conduct such analysis sought
 21 by this Interrogatory should TMS receive relevant information requested from Triumph. TMS
 22 will, however, produce to Plaintiff relevant documents TMS seeks to obtain from Triumph—if any
 23 are provided by Triumph to TMS—such that Plaintiff can carry its own burden of proof and
 24 conduct its own analysis. TMS further objects to this Interrogatory to the extent it calls for a legal
 25 conclusion and speculation. TMS further objects to the definition of the term “You” as set forth
 26 more fully in General Objection D, *supra*.

INTERROGATORY NO. 16: Identify all persons who You (or anyone acting on Your behalf or for Your benefit) caused to be called on at least once occasion more than thirty (30) days after You placed the person's number on Your Internal Do Not Call List, including the dates and times of all calls to all such persons.

SUPPLEMENTAL ANSWER: Subject to and without waiving the following objections, TMS does not place telemarketing calls as assumed by this Interrogatory. Notwithstanding the foregoing, Plaintiff does not allege but merely advises TMS of Plaintiff's belief that a non-party named Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint purportedly on behalf of TMS. As such, TMS attempted to contact Triumph to seek to ascertain whether Triumph placed the alleged telephone calls to Plaintiff at issue in the Complaint, and, if so, the facts, circumstances, and documentation surrounding such alleged telephone calls. Triumph has not responded to TMS.

The objections that apply to this Interrogatory continue as follows:

TMS objects to this Interrogatory as irrelevant and overbroad in that it is not limited in scope. Specifically, Plaintiff contends a non-party named Triumph, and not TMS, placed the telephone calls to Plaintiff at issue in the Complaint. Thus, the policies of TMS as it relates to "Internal Do Not Call Lists" are not relevant for purposes of this action. To the extent TMS responds to this Interrogatory, TMS will only provide information concerning the purported, but unalleged, activity of Triumph. TMS further objects to this Interrogatory to the extent it seeks to compel TMS to conduct any analysis of the calling activity of Triumph necessary for Plaintiff to establish its claims. Indeed, Plaintiff carries the burden to conduct the analysis, through expert testimony or otherwise, sought by this Interrogatory and, as such, TMS will not conduct such analysis sought by this Interrogatory should TMS receive relevant information requested from Triumph. TMS will, however, produce to Plaintiff relevant documents TMS seeks to obtain from Triumph—if any are provided by Triumph to TMS—such that Plaintiff can carry its own burden of proof and conduct its own analysis. TMS further objects to this Interrogatory to the extent it

1 calls for a legal conclusion and speculation. TMS further objects to the definition of the term
2 “You” as set forth more fully in General Objection D, *supra*.

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4 Date: March 30, 2020

GREENSPOON MARDER LLP
LAWREN A. ZANN

5
6 By: /s/ Lawren A. Zann

7 Lawren A. Zann

8 Attorneys for Defendant TOTAL
9 MERCHANT SERVICES, LLC

10 **CERTIFICATE OF SERVICE**

11 I HEREBY CERTIFY that on March 30, 2020, I served the foregoing Supplemental
12 Response and Objections to Plaintiff’s First Set of Interrogatories on all parties of record via
13 electronic mail.

14 /s/ Lawren A. Zann

15 Lawren A. Zann

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